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Execution for Body Parts: A Case of State Crime

Emily Lenning

The media has only recently begun to scrutinize China for the alleged practice of harvesting the organs and skin of its executed prisoners. According to several 'leaks' in the mainstream media, China is using the body parts of its executed for profit in the growing markets of organ transplantation and cosmetics. However, despite the appearance of this being a new phenomenon, evidence suggests that the harvesting of prisoners' organs has a rather lengthy history in China, beginning in the late 1970s. This article outlines the development of organ transplantation as a lucrative business in China, discusses the techniques used by the Chinese government to extract organs and skin from executed prisoners, and develops an argument for why this practice constitutes a case of state crime. Additionally, this article considers the failures of the Chinese criminal justice system at all levels of criminal prosecution to adhere to international human rights laws regarding the administration of justice and the death penalty, and to uphold its own criminal procedural laws.

Keywords: China; State Crime; Execution; Organ Harvesting; Criminology; Chinese Criminal Justice

Introduction

I begin this analysis by describing the systematic practice of using executed prisoners for skin and organ procurement in China. To do so, a brief discussion of how organ transplantation has become widespread and profitable within the state of China is offered, followed by a consideration of the consent of prisoners to donate their organs, and finally a description of how the process actually occurs. I will be drawing on a multitude of sources, ranging from China's own laws to the reports of several non-governmental monitoring agencies, in order to illustrate corroboration and consistency. I will then discuss why this particular action constitutes a state

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crime, how this crime fits into an established theoretical framework, and how the state of China, non-governmental agencies, the international community, and scholars of criminology have reacted and should react to such a violation of human rights.

Within the state of China, it is hard to frame the actual extraction of prisoners' organs as a 'crime,' per se, in the legalistic sense of the term. As will be discussed at length in the following section, the actions of Chinese officials are sanctioned by several internal documents. These documents, entitled *Rules Concerning the Dissection of Corpses*, *On the Issue of Using Dead Bodies of Condemned Criminals*, and *On the Use of Dead Bodies or Organs from Condemned Criminals*, make it quite clear that the 'donation' of organs by executed prisoners is both legal and a priority of the state. However, in addition to gauging state crime by a country's violation of its own laws, criminologists have also recognized international law as a measure for detecting state crime (Rothe & Mullins, 2006).

China does have an obligation to the international community, solidified by its membership of the United Nations. Moreover, several of China's current practices in relation to the administration of justice, although legal within the state itself, run contradictory to a treaty that has been signed and ratified by the state. Specifically, China has signed and subsequently ratified the U.N.'s Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which is legally binding. Violators of the convention are subject to prosecution in the International Court of Justice. Consequently, the events described below can be classified as a state crime, or 'internationally defined unlawful actions committed by nation-states, typically to advance the social, economic, ideological, or political interests of the state or those in control of the state' (Rothe & Mullins, 2006, p. 1). Indeed, the crime of organ harvesting serves to advance the interests of the state of China. Not only is the state profiting monetarily by using state-run hospitals to transplant the prisoners' organs into both citizens and foreigners, but also the state's unprecedented use of the death penalty in general serves to advance the agenda of the Communist Party by creating fear and securing total power over the citizens of China.

There is growing evidence that China is working in conjunction with at least one transnational corporation in order to further its transplant campaign. According to several sources, individuals from various countries are not just traveling to China to receive new organs in state-run hospitals, but are being directly targeted by independent corporations marketing the organs (Newman, 2005; Spencer, 2005). For example, Transplants International, a Chinese company, has been accused of marketing the organs of executed prisoners to Britons in need of transplants (Spencer, 2005). According to *Hospital Doctor* magazine, the company was offering organs for as much as US\$40,000 to desperate recipients (Newman, 2005). Additionally, *The Guardian* claims that it has gathered evidence that an unnamed Chinese cosmetics company is marketing cosmetics made from the skin of executed prisoners to citizens in the United Kingdom (Cobain & Luck, 2005). If these claims are corroborated, these firms are in violation of international laws governing transnational corporations, namely the Responsibilities of Transnational Corporations and Other Business Enterprises with

Regard to Human Rights (2002). However, as such claims have not been corroborated, I turn to focus on the harvesting of organs as a state crime, leaving the consideration of transnational corporate crime for future analyses.

As previously mentioned, on October 14, 1988, China ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), a treaty adopted by the U.N. in December 1984. Upon ratifying the treaty, China made two reservations: first, that it does not recognize the competence of the committee (which oversees compliance) as outlined in Article 20; and second, that it does not consider itself bound by paragraph 1 of Article 30, which states that a dispute between two ratifying states may be subject to arbitration if it cannot be settled through negotiation. The treaty notes that if the state's parties are unable to reach an agreement, the case may be referred to the International Court of Justice.

Despite reservations, China did agree to the remaining conditions of the treaty, including several provisions that are directly relevant to its current treatment of suspected and convicted criminals. Specifically, China did not make any reservations in relation to Article 1, paragraph 1:

The term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Article 2, paragraph 1 notes, '[E]ach state party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.' Article 7, paragraph 3 states, 'Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.' Article 12 outlines, '[E]ach state party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.' And, finally, Article 15 requires, '[E]ach state party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings.'

As I will demonstrate, China's actual practice of criminal justice administration and its criminal procedural laws do not complement their obligations under these stipulations. China has a well-documented history of failing to provide fair trials for its accused citizens, including those cases that involve the death penalty (Amnesty International, 2004, 2005; Congressional-Executive Commission on China, 2005; Human Rights Watch/Asia, 1994; Laogai Research Foundation, 2001; Meithe & Lu, 2005). China's actions in relation to the treatment of prisoners who have been sentenced to death are a clear violation of international law and provide justification for sanctions to be taken against China by the United Nations and, consequently, the International Court of Justice.

Case Description

After the death of Mao Zedong in 1976, China ceased cooperative transplant procedures involving foreign medical advisors and began its own, independent, state-run program (Laogai Research Foundation, 2001). With the introduction of Cyclosporine A (CsA) in the early 1980s, a drug that significantly increases success rates for kidney transplants, China discovered a lucrative business (Laogai Research Foundation, 2001). Records indicate that with the introduction of CsA, which was apparently produced by the Swiss company Sandoz, China saw the kidney transplant survival rate rise from 50% to 80% in the 1980s, to an impressive 90% in 1991 (Human Rights Watch/Asia, 1994). By 1984 China had 98 state-run hospitals that were equipped to provide organ transplants, and the Organ Transplantation Registration Center was established in Wuhan to coordinate state efforts to conduct transplants on a massive scale (Human Rights Watch/Asia, 1994).

In 1979, China's Public Health Ministry published the *Rules Concerning the Dissection of Corpses*, which was the first document to acknowledge the use of executed prisoners for transplant purposes (Laogai Research Foundation, 2001). This document outlined the proper procedures for removing the organs of prisoners. Shortly thereafter, in 1981, the Ministry of Justice reiterated in another internal document the importance of using the organs of executed prisoners. According to this document, entitled *On the Issue of Using Dead Bodies of Condemned Criminals*, the state's use of executed criminals 'is of great necessity from perspectives of medical treatment and scientific research' (Ministry of Justice, 1981, translated by the Laogai Research Foundation, 2001, p. 77). However, the document also notes that organs should only be removed from 'the uncollected dead bodies of condemned criminals, others should be dealt with upon the approval of the family members' (Ministry of Justice, 1981, translated by Laogai Research Foundation, 2001, p. 77).

Although not made public until 1990, yet another document was jointly issued by the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of Justice, the Ministry of Public Health, and the Ministry of Civil Affairs in 1984 (translated by the Laogai Research Foundation, 2001, pp. 78–79; 104th Congress, 1st Session, 1995). This proclamation, entitled *On the Use of Dead Bodies or Organs from Condemned Criminals*, outlines the circumstances under which organs can be removed from executed prisoners. Again, it is repeated that either the prisoner or their family members must provide consent for organ removal, unless the body is unclaimed. The document conveniently does not specify how long a body must remain unclaimed before it can be considered the property of the state. Further, the document specifies:

Use of dead bodies or organs from condemned criminals must be kept strictly confidential.... [V]ehicles with the logo of medical institutions are not to be used, and white clinic garments are not to be worn.... After the dead bodies are used, the crematory shall assist the units in timely cremation.... [I]f the family members wish to collect the remains, the People's Court is to inform them to collect at the crematory. (Laogai Research Foundation, 2001, p. 79)

These stipulations appear to be rather purposeful, inasmuch as they essentially allow for the harvesting of organs to go unchallenged by the families of the executed, in part because of the difficulty in proving that it has occurred in the first place. Nowhere does the document specify that family members must be notified before the prisoner is cremated. In many instances, family members are simply picking up ashes, with no way of knowing whether their loved one ‘donated’ their organs (104th Congress, 1st Session, 1995). Furthermore, there is evidence to suggest that families of the convicted rarely, if ever, give their consent to donate the organs of their loved ones. In his testimony to Congress, Dr. Wu (Director of the Laogai Research Foundation) pointed out:

[I]n modern Chinese society, where life is closely controlled by high-pressure politics and supervision, many family members of executed prisoners dare not, would not, or are unable to claim their loved one’s bodies. Such unclaimed bodies then become government property. (104th Congress, 1st Session, 1995)

Given their status as prisoners, the supposed consent of criminal organ donors is questionable to say the least. Despite the nature of incarceration, the World Medical Association (of which China is a member) does not explicitly ban the use of prisoners for organ procurement, although it does stress the absolute necessity of informed consent in its policy on human organ and tissue donation (World Medical Association, 2000). The Transplantation Society, however, does ban the use of convicted criminals for organ donation, a decision that was made in response to accusations that China was taking advantage of a population that is clearly deprived (104th Congress, 1st Session, 1995; 107th Congress, 1st Session, 2001).

Moreover, it must be recognized that organ donation is, in general, considered to be taboo in China because of its longstanding cultural and religious traditions (107th Congress, 1st Session, 2001; Laogai Research Foundation, 2001). Both Buddhism and Confucianism, popular Chinese religious traditions, ‘dictate that the bodies are to be kept whole after death, meaning that voluntary donations are rare, if they occur at all’ (Hon. Ros-Lehtinen, 107th Congress, 1st Session, 2001, p. 3). In fact, the Chinese are so dedicated to this notion of keeping dead bodies intact that the autopsy rate is virtually zero (104th Congress, 1st Session, 1995). From this perspective, it is rather suspicious that a country that does not have a national organ donor registry has one of the highest rates of organ transplantation in the world—second only to the United States (Macartney, 2005). One source reports that since 1993, China has conducted 60,000 kidney transplants, 6,000 liver transplants, and 250 heart transplants (Macartney, 2005).

The Process of Justice Administration and Organ Harvesting

To understand the process by which organs are harvested from prisoners, it is necessary to understand the entire experience of criminal conviction in China, beginning with the detention of suspects. As such, I begin there and proceed with the journey of a criminal through the Chinese criminal justice system. You will note that at nearly every

stage of the administration of justice, Chinese prisoners are subject to inhumane and quite often illegal treatment, a problem exacerbated by a decentralized legal system and frequent 'strike-hard' campaigns at regional and national levels.

Because China does not have an independent judicial system, the administration of justice within that country is highly related to its political climate. For example, judges are often hand-selected by officials of the Communist Party, and many will refer to political committees for assistance in deciding difficult cases (Congressional-Executive Commission on China, 2002). Further complicating China's legal system is the way in which cases are distributed between the four different branches of the People's Court. According to the Criminal Procedure Law of the People's Republic of China (CPLC, 1997; Congressional-Executive Commission on China), originally published in 1979 and adopted again with changes in 1997, criminal cases are to be handled in either the Primary People's Court, the Intermediate People's Court, the Higher People's Court, or the Supreme People's Court, depending on the type and severity of the crime. Even though China's criminal law specifies which types of crime are appropriate for trial in each court, lower courts have the right to transfer cases to a higher court at any time.

Throughout its history, China has implemented strike-hard campaigns to address crimes considered particularly threatening by the state. Often, the focus of strike-hard campaigns is on individuals who threaten to cause or exacerbate political unrest, although at times the focus has been on more traditional crimes such as drug trafficking (Amnesty International, 1984; Meithe & Lu, 2005). As described by Hu Jintao (Amnesty International, 2004, p. 3), the President of the People's Republic of China:

Any crime which the law regards as serious should certainly receive serious penalties, and any crime which is punishable by the death penalty according to the law, should certainly receive the death penalty. This will ensure the healthy progress of strike hard.

Policies such as this, centered on retribution and political obligation to the Communist Party, are sure to promote miscarriages of justice, inasmuch as the Chinese criminal justice system is largely structured to complement a particular political agenda rather than to protect the rights of the accused. Article 2 of the CPLC clearly states that the aim of the law is to 'guarantee smooth progress of the cause of socialist development.' It is not surprising, then, that China reported an overall conviction rate of 99.1% between 1998 and 2002 (Amnesty International, 2004).

However, there are reports of the widespread practice of torture as a means of extracting confessions during detention, a period prior to arrest during which officers are allowed to interrogate suspects without the presence of a lawyer (Amnesty International, 2004). Despite having signed and ratified the CAT in 1988, and specifications outlined in the CPLC that torture is not to be used as a means of extracting information from suspects, many cases of abuse have been documented by Amnesty International (1984, 2004, 2005). State press reports, for example, admit that in the first 10 months of 2003 there were '460 deaths and 117 cases of serious injury caused by "abuse of power and dereliction of duty" by law enforcement officials' (Amnesty International, 2004, p. 13). The use of shackles, electric clubs, and ankle fetters, worn at times from the moment of apprehension all the way to prosecution (which can take months), have

all been reported by prisoners in Chinese prisons (Amnesty International, 2004; Congressional-Executive Commission on China, 2005; Kent, 1999).

The CPLC, as is, presents several questions regarding the compatibility of Chinese law with the CAT to which the state is obligated. For example, although the CAT makes it clear that the right to a fair trial and criminal assistance is a mandatory requirement, China's criminal law only guarantees that the accused will have access to a lawyer at the time the case is handed to a prosecutor for formal investigation. Essentially, those that have been apprehended by law enforcement are not reassured that they will have representation at the time of detention and arrest and throughout the time they spend awaiting charges which, according to the CPLC, can be as long as 30 days (Amnesty International, 2004). In addition, the state has three days after the case has been given to the prosecutor to inform the accused of their right to a defense, and any case involving a state secret requires the defendant to 'obtain the approval of the investigation organ for appointing a lawyer' (CPLC, 1997). In all criminal cases the investigatory organ has the right to be present when an attorney meets with his/her client and, in cases involving state secrets, the lawyer must seek permission to consult with the defendant. Despite the defendant's supposed right to representation, evidence suggests that lawyers only represent the accused in about 30% of all cases—one major factor being the fear defendants have of repercussion from law enforcement should they choose to appoint one (Congressional-Executive Commission on China, 2005). While the disadvantage created here is a glaring deficiency in the administration of justice, it is only a small part of a larger pattern of prisoner abuse.

In reality, the evidence suggests that the actual treatment of prisoners differs from what is required by the law. According to the CPLC, accused individuals are not to be held for more than 30 days without arrest. However, a growing body of evidence suggests that it is common practice to hold prisoners for much longer than this—in some cases for several years (Congressional-Executive Commission on China, 2005). One such case was recently documented in which a detainee, Xie Hongwu, was held from June 24, 1974, to September 30, 2002, never having actually been formally charged with a crime (Amnesty International, 2004). According to a recent report:

Xie's case reportedly only came to light in May 1996 when provincial officials were touring Guangxi Province to explain the newly promulgated Criminal Procedure Law to local-level officials, and he was noticed in a small windowless cell in a police station in Yulin City, Guangxi Province. When the provincial officials checked his file in the police station, the sole item of documentation was a warrant for his detention dated 24 June 1974. (Amnesty International, 2004, p. 18)

Other cases, such as that of Zhao Yan, who was suspected of leaking state secrets, suggest that it is common for Chinese police to delay the release of evidence so that, once the time limit on detention runs out, they can present reasons to extend the detention (Congressional-Executive Commission on China, 2005). In China, the detention clock is set back to zero each time potential charges are considered: '[W]ith no limit on the number of "new crimes" that police can assert, suspects can be held in pretrial detention for years' (Congressional-Executive Commission on China, 2005, p. 26). When investigators could not prove that Yan gave up state secrets and his detention

was about to expire, they suddenly claimed to have new evidence that he had committed fraud (Congressional-Executive Commission on China, 2005). In August 2003 the Supreme People's Procuratorate reacted to these practices by announcing that it planned to address all cases in which the accused had been held for longer than three years without charge by October of that year (Amnesty International, 2004).

In spite of cases like Hongwu's, the CPLC does make it clear that if the accused feels that he/she has been treated by a judge, procurators, or investigators in a manner that has violated their rights, he/she may file a complaint with the People's Procuratorates. Wu Jianmin, China's Ambassador to the U.N., admitted in 1996 that hundreds of cases involving torture are received each year but conflicting evidence suggests that the numbers are actually in the thousands (Kent, 1999). Unfortunately, the law also indicates that once the complaint is filed, it is left up to the People's Procuratorates to decide whether a formal investigation is necessary. In other words, cases can easily be disregarded as unfounded and therefore not worthy of the state's attention. According to Kent (1999, p. 92): '[I]n 1988 the procuratorates received 1,048 complaints about torture to coerce a statement, of which only 170 were filed for investigation.'

Given inconsistency in the administration of law, the outlandish conviction rate, the range of crimes considered capital offenses, and the barriers prohibiting defendants from a fair trial, it should be no surprise that the sentence of death is common in China. Despite the fact that Article 48 of the CPLC limits the use of the death penalty to only the 'most serious crimes,' there are an estimated 68 offenses punishable by the death penalty, ranging from murder to drug trafficking (Amnesty International, 2004; Lu & Zhang, 2005; Meithe & Lu, 2005). In fact, 69% of crimes punishable by death are non-violent offenses (Amnesty International, 2004). Some sentences meted out by the state are downright petty, such as the 1994 case of two peasants from the Henan province. The two were executed for the theft of 36 cows, and farming equipment worth \$9,300 (104th Congress, 1st Session, 1995). No doubt it is cases such as this that are contributing to China's high execution rate. According to Amnesty International (2005), at least 3,400 people were executed in 2005 alone—but as China keeps the number of executions a state secret, the actual number may be much higher.

Recently, the media have accused China of wrongful convictions in several death penalty cases, sparking a national debate regarding the use of the death penalty (109th Congress, 1st Session, 2005). As a result, the Chinese government has agreed to focus on death penalty reform, primarily by transferring the power to review death penalty cases to the Supreme People's Court (SPC). While this was at one time standard practice, power eventually transferred down to the High People's Court due to the number of SPC cases (Congressional-Executive Commission on China, 2005). The Congressional-Executive Commission of China (2005) reports that this may decrease the number of executions in China: 'While the SPC changed judgments in nearly one-third of the 300 death sentences it reviewed in 2003, provincial high courts changed judgments in only one percent of the death sentences they reviewed' (Congressional-Executive Commission on China, 2005, p. 34).

Nevertheless, annual execution rates remain in the thousands and reports of organ harvesting continue to surface (104th Congress, 1st Session, 1995; 107th Congress, 1st

Session, 2001; 109th Congress, 1st Session, 2005; Amnesty International, 1984, 2004, 2005; Laogai Research Foundation, 2001). The controversy is not so much that prisoner organs are being used but that they are in fact being sold for profit by state-run hospitals in areas such as Guangzhou, Xucheng, and Zhengzhou (109th Congress, 1st Session, 2005). There is an abundance of evidence, including witness testimony, that the practice of organ harvesting in China is calculated and systematic—that is, that executions are conducted in such a way that they complement the increasing demand for organs (104th Congress, 1st Session, 1995; 107th Congress, 1st Session, 2001; 109th Congress, 1st Session, 2005; Amnesty International, 1984, 2004, 2005; Laogai Research Foundation, 2001). In his testimony to Congress, for example, David Rothman (104th Congress, 1st Session, 1995, p. 33) revealed:

[O]ne American transplant surgeon reported to me that he was invited by the Chinese to perform a transplant there—when he asked how officials could be certain that an organ would be available when he arrived, he was informed that an execution would be scheduled to fit with his calendar.

Indeed, the treatment of prisoners on death row reflects the need of the state to synchronize the timing of executions with the specific needs of organ recipients. Prior to execution, death row prisoners are subjected to preliminary check-ups conducted by doctors from state-run hospitals (107th Congress, 1st Session, 2001; Laogai Research Foundation, 2001). In an interview with Harry Wu, Dr. Yang Jun (Laogai Research Foundation, 2001, p. 18) of the Mudanjiang Cardiovascular Center in Heilongjiang Province, admits:

I personally took part in a series of donor medical tests on death row prisoners. Due to high-level involvement including city, provincial, and central leadership, judicial organs willingly supported our hospital's endeavors and offered coordination on their own accord.... First in July of 1992 and again from April to September, 1993, a dozen times, after the court notified our hospital, I went to the court for the prisoners' basic data including sex, age, general physical condition, blood type and record of disease. Our hospital director and related specialists would screen the prisoners together.... After preliminary screening we singled out a twenty year old male prisoner, a rural migrant who had no relatives.

Clearly, prisoners are screened in order to conduct transplants efficiently, suggesting that prisoner donation is calculated on the part of the state. However, Dr. Jun is not the only doctor to have testified to his involvement in the harvesting of body parts from death row prisoners.

There is evidence to suggest their skin is harvested as well (107th Congress, 1st Session, 2001). For example, in his testimony to Congress, Dr. Wang Guoqi (107th Congress, 1st Session, 2001) describes his position as a human tissue specialist at the Paramilitary Police Tianjin General Brigade Hospital in Tianjin. According to Dr. Guoqi (107th Congress, 1st Session, 2001, p. 57), who admits to removing the skin of hundreds of executed prisoners:

[W]e would cut off the ropes that bound the criminals' hands and remove their clothing. Each criminal had identification papers in his or her pocket that detailed the executee's name, age, profession, work unit, address and crime. Nowhere on these papers was there

any mention of voluntary organ donation, and clearly the prisoners did not know how their bodies would be used after death.

Dr. Guoqi further testified to the use of the drug Heparin as an anti-clotting agent, which was reportedly administered to prisoners immediately before execution in order to prevent their blood from clotting upon death. According to Dr. Guoqi, prisoners were told that the injection was actually a tranquilizer to prevent them from suffering during execution. Ironically, prisoners responded by thanking the government for its compassion.

Several witnesses have testified that, upon execution, prisoners' bodies are placed in an unmarked ambulance where their organs, skin, and/or their corneas are removed by plain-clothed surgeons, in accordance with the aforementioned Chinese statutes (104th Congress, 1st Session, 1995; 107th Congress, 1st Session, 2001; Laogai Research Foundation, 2001). The organs, skin, and/or corneas are then transferred to a separate van which goes to one of the state-run or military hospitals as the prisoners are driven directly to the crematorium. It is only at this point that the families of the executed can claim the ashes of their loved ones—if they can afford to pay the state for the bullet that was used to kill them and for the crematory process (Gao, 104th Congress, 1st Session, 1995).

Theoretical Explanation

One must wonder how the practice of organ harvesting can occur, given China's international legal obligations. The answer lies in China's motivation to profit from organ harvesting, opportunity structures that promote the practice, and the ineffectiveness and/or complete lack of controls at the international, state, and institutional levels (Kauzlarich & Kramer, 1998; Rothe & Mullins, 2006). While I recognize the importance of the individual level of analysis (Kauzlarich & Kramer, 1998), I am unable to consider it for this particular article, given the nature of the cases and sources of data available to me. However, the individual level of analysis is important to the overall scheme of any theoretical model and should be a focus of analysis in future work.

Motivations for Organ Harvesting

At the international level of analysis, China's motivation is clearly a high demand for transplantable organs and an interest in economic gain. For example, as of April 7, 2006 there were 91,532 individuals awaiting organ transplants in the U.S. alone (Organ Procurement and Transplantation Network, 2006). As previously mentioned, there have been several reports of individuals traveling from other countries to have transplants performed in China—indeed, China is actively recruiting foreign patients. The Beijing International Medical Support Network Center (2006), for example, offers kidney transplants for US\$70,000 and liver transplants for US\$120,000, boasting that it performs about 100 kidney transplants and 270 liver transplants per year. Moreover, the Center openly admits that the organs come from executed prisoners.

As transplants are roughly 30% cheaper in China than in other countries, foreign organ recipients have at least one incentive to travel there for such surgery (Macartney, 2005).

On a state-by-state basis, then, it is not surprising that China is not being pressured to end its practice of organ harvesting. Certain nation-states, such as the U.S., have a vested interest in maintaining positive relationships with China, which may account for the lack of confrontation (Lardy, 2003). Nevertheless: 'The concepts behind international law are founded on consent and mutual agreement between states and by state practice within the international arena of relations; thus, international law is mutually interacting within international society' (Mullins, Kauzlarich, & Rothe, 2004, p. 287). Accordingly, China has an obligation to the international community regardless of its relationship to individual nation-states.

There are also several potential motivators at the state level for the crime of organ harvesting, specifically in relation to the overwhelming use of the death penalty. Motivations for the death penalty probably include the state's constant concern about overcrowding—which has prompted other state-led campaigns such as one-child laws—as well as a desire to exercise total power over the citizens of China. The collusion of the criminal justice system in political goals has created an environment in which individuals are arbitrarily processed through the system to demonstrate the power of the Communist Party. Certainly, public executions serve as a reminder to citizens of the consequences of even the mildest rebellion and are an example of how ideological goals are being met at the expense of potentially innocent citizens (Laogai Research Foundation, 2001). According to Amnesty International:

During sentencing hearings, condemned prisoners have been lined up in front of the court's public gallery to hear their sentence, sometimes with photographers and television cameras focused on their faces to capture their expression as sentence is passed. Such images are commonly used to publicize periodic crackdowns.... [P]risoners continue to be paraded in an open truck through busy streets to the execution ground, with a placard bearing their name crossed out in red strung around their neck, and surrounded by People's Armed Police. (2004, p. 47)

Pictures taken by NGOs frequently document these events occurring, despite the document *Supreme Court's Interpretations of Specific Questions on the Implementation of the Criminal Procedure Law* issued in 1998 which forbids parading through the streets and/or publicly humiliating those awaiting execution (Amnesty International, 2004).

In this case, the organizational level refers to the coordinated efforts of the criminal justice system (from police to corrections and the courts) and the state-run medical system of China. All of these organizations (and the actors within them) are motivated by their primary goal of appeasing the state. Both legally and ideologically these (theoretically) independent systems are bound by the same organizational goals—to promote the agenda outlined by the Communist Party. Pressure from officials in the criminal justice system and the medical system essentially forces individual actors (e.g., police, correctional officers, doctors) to act in accordance with these goals.

Opportunity Structures

The opportunity structures for organ harvesting at the state level are quite clear. Chinese criminal law, and several procedural documents discussed earlier, make it apparent that organ harvesting is not only legal and state-endorsed but desirable as well. As long as the Chinese government is left unchallenged by its citizens, and as long as the state continues to avoid the reach of international sanction, death row prisoners will continue to be used as sources of profit. By and large, opportunity structures are embedded in the functioning of the state, which provides no controls for the practice of organ harvesting and, furthermore, denies its citizens the information necessary to take actions against the state.

While synchronization between the criminal justice system and the Chinese medical community is required to make organ harvesting possible, task segregation and role specialization are also key to the opportunity structure presented by the state. As the testimony above demonstrates, the accused in China are processed through a highly segregated system, inasmuch as they are transferred from court to court and from official to official throughout their experience in the system. This *modus operandi* is conducive to the secretive nature of state functions, and also to keeping individual officials in the dark about how the entire process actually works, making refusal to participate much less likely. As Pei Qi Gao, former member of China's Public Security Bureau, testified:

Although I served in China's public security system for a number of years, I am not exactly sure how each step of the process is done; for example, how the hospitals and the judicial institutions coordinate which organs are extracted, how they are extracted, what the price is, and then also who knows which step. So I really do not think anybody has a clear picture of the whole process. (104th Congress, 1st Session, 1995, p. 14)

Moreover, individual actors within the Chinese criminal justice system demonstrate several deficiencies, including 'a lack of legal consciousness, poor training, and weak forensic skills on the part of investigative personnel (problems that lead to an over-reliance on confessions)' (Congressional-Executive Commission on China, 2005, p. 29). Pressure is placed on criminal justice officials by the state to demonstrate consistent advances in the fight against crime, 'and the practice of tying law enforcement salaries and promotions in part to case-breaking rates' also contributes to corruption within the system (Congressional-Executive Commission on China, 2005, p. 29).

It is also important to recognize physicians' role in the practice of organ harvesting. Western critics of the practice may argue that by taking part in the execution of prisoners, the doctors are behaving counter to one of the most basic principles of medical practice—the absolute maintenance of human life. In China, however, it appears 'that there is no organized body that can represent the physicians' ethics in counter-balance to state demands,' including a formal licensing board that would allow physicians to set their own ethical standards (Rothman, 104th Congress, 1st Session, 1995, p. 34). Given these conditions, it is easy to see how the field of medicine has become a pawn of the Communist Party instead of a self-governing entity.

Ineffectiveness of Controls

The purpose of international law is to monitor and control, and even more importantly to sanction states for defying treaties that have been ratified, despite the potential benefits of defiance (for both the state in question and other states party to the treaty). Despite this, international controls have thus far been ineffective in curbing China's practice of using the organs of executed prisoners. This is probably due to the fact that, although China has ratified the CAT, it has otherwise distanced itself from the international community by refusing to join the International Criminal Court,¹ and consistently ignoring the recommendations of non-governmental agencies. Hence, although China has signed and ratified the CAT, the Chinese government has otherwise been quite strategic in avoiding repercussions for its failure to maintain its commitments.

To say the least, China has been hesitant to embrace international laws fully and, in the case of the CAT, has purposefully opted out of subsequent protocols that may be effective in calling its actions into question. For example, although China did ratify the original CAT, it did not ratify the optional protocol added in 2002 that would allow for international bodies to enter state detention facilities in order to perform inspections. As a result, the U.N.'s ability to monitor China's treatment of prisoners and to submit a case to the International Court of Justice in consequence is significantly diminished, if not altogether undermined. In this respect international controls have proven to be ineffective.

In addition to avoiding potentially dangerous protocols, China has completely avoided those treaties that severely conflict with its criminal justice procedures and that would be most useful as a control on organ harvesting, such as the International Covenant on Civil and Political Rights (ICCPR). Although China did sign the document on October 5, 1998, it has not yet ratified it. By ratifying the ICCPR China could make itself more vulnerable to sanction, potentially leading to an actual prosecution. Currently, China's actions constitute violations of Articles 6, 7, 9, 10, 14, and 19 of the ICCPR. I would argue, however, that the lack of ratification does not excuse China's behavior. By signing the ICCPR the state has indicated its intent to adhere to the stipulations laid out in the documents, and its actions should reflect this objective.

Also at the international level, NGOs acting as controls have limited legal reach, and therefore often find themselves stymied. Nevertheless, NGOs can be quite influential: they do have the potential to act as catalysts for social change. In this particular case, NGOs that monitor human rights issues (e.g., Amnesty International, Human Rights Watch, and the Laogai Research Foundation) and oversee medical behavior (e.g., the World Medical Association and the Transplantation Society) are particularly important. As we can see from the citations throughout this article, NGOs have diligently monitored and reported to the international community the common practices of the Chinese criminal justice system.

It is important to remember, however, that some NGOs discussed here, namely those in the medical arena, have some goals that align with China's practices—that is, medical NGOs have a vested interest in a supply of organ donors. This may be why the World Medical Association insists on gaining the consent of all organ donors but does

not expressly prohibit the use of prisoners for organ procurement (World Medical Association, 2000). On the other hand, there is the Transplantation Society, whose membership expressed disapproval of using the organs of executed prisoners at its 15th World Congress in 1994 (Foster, 1997; 104th Congress, 1st Session, 1995). It is important to note that this disapproval was a direct result of rumors concerning China's organ harvesting (Foster, 1997). So, while NGOs potentially have the power to bring about social change, their agendas are often influenced by time-specific values and the social climate in general.

The key to state controls, or the lack thereof, lies in the secret nature of state functions. Many of China's internal actions, including those of the criminal justice system, are considered state secrets and are protected by the Law of the People's Republic of China on Guarding State Secrets adopted on May 1, 1989. The Law of the People's Republic of China on Guarding State Secrets explicitly states: 'State secrets shall be matters that have a vital bearing on state security and national interests and, as specified by legal procedure, are entrusted to a limited number of people for a given period of time.' Secrets, in addition to being concerned with economic and social development, science, and technology, are also concerned with 'activities for safeguarding state security and the investigation of criminal offences; and other matters that are classified as state secrets by the state secret-guarding department.' So, in general, the citizens of China are denied a clear view of state behaviors.

Moreover, China's communist structure prohibits citizens from actively changing or even protesting against the way it functions. Protest against the government is not unheard of in China; however, it is strongly discouraged, and the strike-hard campaigns against political dissidents often result in severe punishment, including the death penalty (Amnesty International, 1984, 2004; Congressional-Executive Commission on China, 2005). Not only is the international community kept in the dark regarding the practices of the Chinese government—its own citizens are as well. As a result of institutionalized fear, change from within China is highly unlikely.

As individual representatives of the criminal justice system and the Chinese medical community are acting within the directives and goals of the state, there are few controls possible at the organizational level. In fact, China's culture of compliance, and a fragmented communication process between separate factions of the state, actually serve to promote the harvesting of organs rather than threaten it. It would seem that defense lawyers would be most effective in curbing the conviction rate, but they 'are seriously handicapped by established judicial practices. They have access to a part of the file concerning the defendant, they cannot confront witnesses, and are effectively barred from challenging the validity of the charges' (Amnesty International, 104th Congress, 1st Session, 1995, p. 39). Moreover, both those acting within the goals of the state and those restricted by them have a clear picture of their possible fate if they rebel against the desires of the state, making compliance with the practice of organ harvesting almost certain. In fact, 'Some lawyers have been subjected to demotion, detention and even physical violence as a consequence of attempting to mount an adequate defense in criminal cases' (Amnesty International, 104th Congress, 1st Session, 1995, p. 39). While a few of those involved with organ harvesting have come forward (e.g., Harry

Wu), they have done so in the safety of other nation-states and, ultimately, their pleas have gone unheard.

How Should We Respond to this Case?

If our interest is in social justice and fundamental human dignity for all, who then are the policy-makers—governmental and non-governmental—we hope to reach? Who has responded to this form of state crime thus far and who should be responding? Responses to the atrocities committed against Chinese death row prisoners and their bodies should come from at least three sources: China itself; the international community (i.e., other nation-states and NGOs); and criminologists. What then are the moral obligations of each?

China

In response to recent accusations of state corruption, a document intended to regulate organ transplantation has finally been drafted by the Communist Party of China (Chinacourt, 2006). However, it is not yet clear whether the document addresses the extraction of organs from executed prisoners. It has been reported that the document, if approved by the Legislative Affairs Office of the State Council, will effectively ban the sale of human organs (Chinacourt, 2006). In any event, the most effective way to end the sale of prisoners' organs is not to place more regulations on the practice but to ban it altogether. However, given the financial benefits of the practice, it is more likely that a push for overall legal reform in China would be more productive in combating the system's abuse of human rights. Fortunately, some change is beginning to take place in that system already.

As a result of pressure on the Supreme People's Court of China to monitor more closely the state's application of the death penalty, death penalty appeals will now be heard in open court (Chinacourt, 2005a). According to the Supreme People's Court of China, this decision is in response to allegations made by the Chinese media that China has executed several citizens that were later found to be innocent (Chinacourt, 2005b; Congressional-Executive Commission on China, 2005). While this will not directly end the use of prisoners for organ harvesting, the decision does have the potential to reduce the number of prisoners who are executed, and thus could have an adverse impact on China's organ market. In addition, at the 2nd Session of the 10th National People's Congress in March 2004, the Chinese Constitution was amended to state: 'The state respects and protects human rights' (Chinacourt, 2005a). While this addition is rather ambiguous and undoubtedly symbolic, it does have the potential to alter the administration of justice in China. At the very least, it provides some leverage for those fighting for human rights in China.

Further, it is important to note that China has recently taken other steps to improve its criminal justice system. In 2004 the state formed a special task force with the goal of eventually ratifying the ICCPR—which, at this point, would be the most effective control on the practice of organ harvesting. In 2005 China also released some

information about specific parolees and possible sentence reductions for political detainees; given China's secretive past, this is a big leap in the right direction (Congressional-Executive Commission on China, 2005). The more information that outsiders can gain about China's practices, the more likely change becomes. Also in 2005, the Supreme People's Procuratorate announced that it would investigate allegations of torture and illegally obtained evidence more closely (Congressional-Executive Commission on China, 2005). While none of these steps directly address the issue of organ harvesting, they do demonstrate China's desire (albeit begrudging) to address the concerns of other nation-states and NGOs. These advances represent the beginning of what will presumably be a long road to piecemeal legal reform.

The International Community

Several things need to occur on the international level with respect to China's practices, beginning with the actual, rather than symbolic, denouncement of Chinese policy by other nation-states and international bodies of control. Despite the fact that international human rights standards denounce the death penalty, especially the arbitrary implementation of such a sentence, several countries (including the U.S.) still maintain working relationships with China (Lardy, 2003). Moreover, citizens from these other countries benefit from China's practices by traveling there to receive the organs of prisoners (Newman, 2005; Spencer, 2005). It is important, nevertheless, for internationally recognized standards of human rights to be maintained, and the key to doing so is to legitimize them through the ratification of all applicable conventions and treaties. Hence, justice can be most effectively administered if China is to ratify the ICCPR and, consequently, be held accountable by it. The only way in which this will happen, however, is if China is persuaded to embrace a position within the international community from which it can be held accountable. As indicated, NGOs can play an important role in bringing this about.

We have seen how NGOs have been diligent in the collection of information regarding China's practices. Specifically, Amnesty International, Human Rights Watch, and the Laogai Research Foundation have consistently investigated and reported on cases related to organ harvesting. Despite the inability of NGOs to level sanctions on China, they play an important role in exposing violations of widely accepted human rights standards. Any responses from the international community are likely to be the result of intense pressure from NGOs, which effectively elicit the attention of the public and government officials from sympathetic countries. Hence, the continued vigilance of concerned organizations will be a key variable in change in China.

Of utmost importance is the persistence of NGOs in pressuring China to allow the U.N. to monitor its implementation of the death penalty. Although China did ratify the CAT, it 'has not yet acceded to the Optional Protocol to the Convention, adopted by the UN General Assembly on 18 December 2002, which allows for regular visits of inspections to places of detention by national and international bodies' (Amnesty International, 2004, p. 13). If China fails to ratify the ICCPR, this optional protocol to

the CAT is extremely important in terms of the power that could be exerted by international watch groups, potentially putting an end to the practice of organ harvesting.

Criminology

Often when criminologists point a finger at policymakers as they petition them to effect social change, they fail to consider their own ethical responsibilities within the very structures they are questioning. In reality, they have power to effect change—should they choose to use it. As governmental data indicate that so-called street crime is declining, criminologists can now move on to explore those crimes that are the source of the most devastating harms, namely, crimes of state (Rothe & Friedrichs, 2006). It is only through activism as they confront states engaged in crimes against humanity that critical criminologists can formulate visions of justice that hopefully prevent such crime (Rothe & Friedrichs, 2006). Given the globalizing nature of our world today, their best hope for an ethical stance against state crime is to create criminologies that make a difference in people's lives. The biggest threat to humanity is not thugs on the street but thuggish policies in our governments and in our most sacred and vital institutions.

China's harvesting of prisoners' organs is one state policy that must be confronted, and criminologists cannot exempt themselves because of the complex nature of the task involved. New conceptions of justice and human dignity must be created, to allow old, stagnant arguments about which victims deserve our attention to be laid to rest (Mullins & Rothe, 2006). Engaging the human community in this way is the only way in which the field of criminology can move forward with dignity.

Note

- [1] See Mullins et al. (2004) for a general discussion of problems related to the International Criminal Court.

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